G. R. S. 58]

Previous references.
Legis 38-06-5 A"
1-19-11-1
4-2-7
16-10-7, 12-26 & 28 (Legis)
50-11-5
~~Endorsements.~~
30-14-4.
45 273-13-2
Legis 50-14.

1915. 16

File No. 7-15

Serial Nos. 1-3

GENERAL AND REVENUE SECRETARIAT.

Preserve for 3/17/29

Serial Nos. 1-3

Part B for June 16

SUBJECT.

Legislating so as to provide against the practice of ordering the delivery of stolen mining material to the common nominee of the mining Companies compared on the K.G.T.

1) To The D.M. Kolar.
J. 772 of 12/8/15
Calls for, for reference, copies of the judgements of the Spl Magte. K.G.T. in certain cases.

W D 1351—GPB—20,000—13-12-15

11/7/16.

G.R.S. 11] 1915-16

GENERAL AND REVENUE SECRETARIAT.

(Legis)

NOTES.

File No. 7-15

FILE HEADING.

Legislating so as to provide against the practice of ordering the delivery of stolen ~~of~~ mining material to the common nominee of the mining company on the K.G.F.

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

NOTES—First Sheet.

GPB—35,000—15-6-12

R. S. 121

General and Revenue Secretariat.

Legis. File No. 7 of 1915-16

(2

Serial No.	
Of this 492-14 Flag V	1st Members orders at page 12 of note of Legis 30 of 1914-15 re delivery of gold &c. the subject matter of theft &c. to the Common nominees of the Mines in K.G.F. under sec: 517 of the Criminal Procedure code, 1904.
	~~Recorded~~
	1) "It is worth considering again whether legislation may not be resorted to. Please search if there are any precedent elsewhere for or against the ~~pro~~ position that even though no individual or corporation may not prove ~~that~~ their claim to a piece of property it may be given to all of a certain number who may be presumed to contain the owner among them."
	Init) H.V.N. 3/3/15.
	Init) D.M.N.
	2) "Please open a separate file and put up all references
	Init) G.S. 4/3

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

J. Secn 492-14

R. S. 12]

General and Revenue Secretariat.

Legn File No. 7 of 1915-16 (3)

Serial No.	
	D Submitted In England the law relating to restitution of property the subject matter of an offence is ~~contains~~ stated at pages 684 & 688 of Vol. 9 of Lord Halisburys' laws of England. According to that the property can be restored to the owner or his representative. This may therefore ~~cast a duty~~ mean that before the Court can pass an order for restitution it must be satisfied as to who the owner is. But in sec: 517 of the Cr. Pro code the Court has power to make such order as it thinks fit for the disposal of the property. No other law on the subject is traceable. ~~Certain records~~ 4) ~~12/5/16~~ Records in Cr. cases nos 503, 537 and 538 on the file of the Special Magistrate K.G.F. were also called for by the 1st member for being studied in this connection. They are received and perused & ~~are~~ kept in the linked file (Legis 50-14) 12/5

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

(4

G. R. S.-12]

General and Revenue Secretariat. | Legis File No. 7 of 1915. 16

Serial No.

Jus. 492-14
Previous file sent to Secy. on 12/15/14

Extract from the First Member's orders in Legis 50-14 (Sl. 16)

5) " Please put up the matter of amendment of law again. We may decide once for all whether to accept this or not as final.

Sd/- H. V. N.
19/7/15

NOTES—First Sheet.

6) Subd. The previous file on the subject is just was submitted on 12/15/14

24/7/15 Sd/-
26

NOTE—Contn. sheet.

GPB—70,000—17-12-15

(5

Judgt. of the Hh. Court
in Cr. Ap. 170 of 1914-45

By 1. For acquitting the appellants, the Full Bench has come to the conclusion that there was not sufficient evidence to show that the stamps sold in dispute belonged to any of the Kolar Companies. Yet the Division Bench declined to set aside the Magte's order that the gold should be confiscated to Government. After this, I think that we should no longer

hesitate to legislate that unless ~~of~~ it is proved that any property dealt with under Ss. 517, ~~518~~ to 524 of the Cr. Pr Code, should not be delivered to any person unless it is legally proved that the said property belongs to the said person

8) The division Bench has been laid down a dictum that a lower degree of proof may be sufficient in cases dealing with disposal of property under S. 517 than in cases of offences charged against persons.

9) The matter should

be treated as urgent. (6

10) 2. (Please get copies of the posts now put up & also all the posts referred to therein)

11) 3 The copies now sent ~~to~~ should be returned to the D.G. of Police after taking copies thereof)

11/8/15

18/11/8

General and Revenue Secretariat.

Legis File No. 7 of 191 5-16

Serial No.	
	Legis 202-15
12)	Subd. with a draft. to the Dt. Magistrate, Kolar Dt. asking him to send copies of judgments in the cases referred to in the judgments in the file. After the issue of this draft the file will be sent to the Typing section again to prepare a copy of the judgments now in the file and the judgments will then be returned to the I.Gl. of Police as ordered by the 1st member. 12/8/15 Dtd. (93) Issue today 12/8
1	No. J 772 dated 12/8/15 to the Dt. Magistrate Kolar Dt. Calls for copies of the judgments in the cases noticed in the judgments.
(4)	Subd. A typed copy of the judgments in Govt. Vs Mahomed Usman has been prepared and put up in the file. The copy received from the I.Gl. of Police has to be returned to him as ordered by the 1st member at para 3 supra. A draft returning the same is put up. Copies of the

NOTE—Contn. sheet.

GPB—20,000—30-6-15

J Nil 2021 15

(10)

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 7 of 1915-16

Serial No.	
	judgments referred to in these judgments have been called for from the D.M. Kolar.
	cl 25/8/15
	(15) Issue Es 26/8
2	To - The S.P. of Police no 901 - 27-8-15 - Returns the copies of Judgement in cr. case no. 839 of 1914-15 in the court of First class Magistrate K.G.F. and in cr. appeal case no. 170 of 1914-15 in the Chief court.
3	No 87 dated 27th Aug: 1915 From the Dt Magistrate Kolar Dt Submits copies of judgments in certain cases as called for in G.O.

NOTE—Contn. sheet.

GPB—20,000—30-6-15

. R. S. 12]

General and Revenue Secretariat.

Legis 492-14

Legs File No. 7 of 1915-16

(11

Serial No.

16) Please put up the printed file referred to in Leg file 19-4

Eg
16/3

13)

Flag K

Subd. with the printed collection of Legis 38-06 Sls 1-5 A. as ordered above.

18) The files regarding the cases in which stolen gold &c. were ordered to be delivered over to the common nominee of the mines working on the K.G.F. are also linked (Legis 50-14 and Legis 7-15).

18/3/16

19) Precedents were searched for but are not available. So far as criminal law is concerned, there is no piece of legislation anywhere else analogous to the Mining Regulations. In all ordinary cases of crime, it is extremely essential to state the name of the owner of the property affected. But in the case of offences under the Mining Regulations, it is not necessary that before an offender is charged, it must be proved that the gold or belonged to a particular person. Hence the underlying principle of legislation is based on a presumption which does not appear to have its counterpart anywhere

Eg
18/3/16

First Member)

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

J No 492-14

R. S. 12]

General and Revenue Secretariat.

Legs File No. 7 of 1915-16 (12)

Serial No.

20) It may be considered whether S. 517 &c of the Code of Cr. Pr. may not be amended so as to restrict the Power of the Court to deliver property to any private party to cases in which the ownership of the party claiming the thing has been proved, i.e. in which individual or communal ownership (& not merely ownership in the alternative) is established. ~~It~~ Please draft an amendment & submit for consideration at a meeting of Council

27/3/16

J No

Note—Contn. sheet

GPB—65,000—17-6-12.

6/4/16 Dept. of Justice

G. Jun 492-14 1659

R. S. 12]

General and Revenue Secretariat.

Legs File No. 7 of 191 5 (13)

Serial No.

2P) Draft Bill with statement of Objects and reasons is put up.

30/3/16

22) Submitted for favour of approval or other orders.

20/4

Second Member)

2874.
22.4.16.

23) I am not in favour of this legislation. The view on which it proceeds — that specific ownership should be proved in every case, and that ownership in the alternative is not enough — does not seem to me correct in principle, and if accepted it is likely to lead to a good deal of difficulty with the Mining Companies, even if we can get the Govt of India to sanction it.

10) The matter may, if advised by the Dewan, be discussed in Council

Point for orders by Dewan.

24/5.

12/5/16

24) Seen

24/5/16

for favour of orders to Dewan

17/5

19/5

Dewan)

25) The subject may be discussed in Council.

Dewan's Note 24/5

6 C 68
2-5-16
Bill print books

24.5.16

C.S. and Dewan 25/5

NOTE—Contn. sheet.

GPB—65,000—17-6-12.

G. R. S. 12]

(14

General and Revenue Secretariat. | Legis File No. 7 of 191 5

Serial No.	
27	I am not in favour of the proposed amendment. Ld 19.5

NOTE—Contn. sheet.

GPB—70,000—17-12-15

Extract from the Proceedings of the 385th Meeting of the Council of His Highness the Maharaja, held at Mysore on the 8th June 19 16.

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12. Subject.- (Clause ii of the Schedule).

Question of amending section 517 of the Code of Criminal Procedure 1904, so as to restrict the power of the Court to deliver property to any private party, to cases in which the ownership of the party claiming the thing has been proved.

OPINION OF THE COUNCIL

The question of amending the law may be dropped.

Sd. M. Visvesvaraya,
DEWAN OF MYSORE.

"EXTRACT"

D. M. Narayana Rao 9/6

Secretary to Government,
General Department.

W. D. 1364—GPB—200—14-12-15

639-15

G. R. S. 12]

General and Revenue Secretariat.

Legn 1 File No. 7 of 1915-16 (16

Serial No.	
	29) The papers may be filed. 9/6
	8/10/16

10/6/16

NOTE—Contn. sheet.

GPB—10,000—13-6-14

2

12/8

b

G.R.S. 26]

(17

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

leg Section
File No. 7—15
Serial No. 1

General and Revenue Secretariat

( )

, *the* 191

No. J 772

Date of issue 12/8/15

To The District Magistrate
Kolar Dt.

Signed by Mr G. Srinivasa Iyer

Sir

I am directed to request you to be so good as to obtain and forward to this Office, for reference, copies of the judgments of the Special Magistrate K.G.F. in the marginally noted criminal cases as well as the copies of judgments

over.

(1) Govt. vs Kullan
C.C. No 503 of 1914-15

(2) Govt. vs Abdul Razack
C.C. No 537 of 1914-15
also Cr. appeal. No 129-14 (Chief Court)

(3) Govt. vs Abdul Aziz
C.C. No 538 of 1914-15

(4) Govt. vs Panchakshara
C.C. No 663 of 1914-15

(5) Chellamuttu vs Govt.
C. Appeal No 44 of 1911-12 (Chief Court)

(6) Gulam Hussain vs Govt.
C. appeal No 110 of 1913-14 (Chief Court)

(7) ~~Govappa vs Govt.~~
19.

3/12/15

If the Chief Court in appeal intervenes the in any of those cases ~~has~~ ~~been appealed~~ appeals have been preferred, the matter may kindly be treated as urgent.

I have &c

GS 12/8/15

for Offg Secy to Govt

G.D.

Rte
12/15

List of enclosures.

Copied by

Examined by

GPB—20,000—14-2-14

1 2674

G. R. S. 26]

19

SUBJECT.....

.....

.....

Diary No. of letter replied to

Section Police.
File No. 7 — 15
Serial No.

General and Revenue Secretariat
( )
, the *191* .

No. 9901 · En · 4.

Date of issue 27/8/1915.

Signed by Hr. G. Srinivasa Iyr

To The Inspector General of Police in Mysore

Sir

I am directed to return herewith the copies of judgments in Cr. case No 839 of 1914-15 in the Court of the Asst. Commr and First class Magistrate, K.G.F., and in Cr. appeal case No 170 of 1914-15 in the Chief Court

over.

9/2/16

(2)

of Mysore (Govt of Mahomed Usman) which had been sent by you for the perusal by the 1st Member of Council.

I have &c.

S. Wolf
For Secretary to Govt
G.S.

List of enclosures.

Copied by

Examined by

GPB—20,000—14-2-14

Copy of Enclosure to 82

IN THE COURT OF THE ASSISTANT COMMISSIONER

AND

FIRST CLASS MAGISTRATE, KOLAR GOLD FIELD.

Dated the 11th May 1915.

Criminal Case No.839 of 1914-15.

Present:-

B. Venkoba Rao, Esquire B.A.,

1st Class Magistrate.

Complainant — Accused.

Government. — Versus. — Mohammad Usman

The case against the accused Mohammad Usman is as follows:-

On 5th May 1915 at about 3.45 P.M. soon after the arrival of the 1.72 up train at Champion Reefs from Marikuppam, the accused was pointed out to the Railway Sub-Inspector Muniramasawmi P.W.2 by the Police Detective Staff with information that he was suspected to be carrying gold. The accused had a ticket, Exhibit P.2, from Champion Reefs to Bowringpet and was getting into the train. The Sub-Inspector arrested the accused and took him to the Booking Office and searched him in the presence of the Station Master Mr. Vasudeva Mudaliar P.W.3 and 2 or three other persons. The Sub Inspector found a cloth bundle which had been 'waxed up' concealed in the loin cloth of the accused in front. The bundle was heavy. On opening it a paper packet article 3 was found containing four balls of sponge gold.

It was weighed in the presence of punchayetdars and found to weigh 5 tolas. The accused said that one Bapu Sab a gold dealer residing in Steven's camp gave him the packet to carry in a house in Steven's Camp. The sponge gold was

(2)

sealed with the Station Master's seal and taken for assay by the Sub Inspector. P.W.1 Mr. Frederick Stapleton, Reduction Officer values the sponge gold at approximately Rs.102/-. The Sub Inspector tried to find Bapu Sab but the accused was unable to show him. According to Mr. Stapleton the sponge gold of this case article 3 bears cloth marks which are probably due to the amalgam having been wrapped in a cloth. In the Mines, the amalgam is squeezed through chamois leather. It is not impossible to make sponge gold outside the Mines. Mixing gold in jewellery with mercury is not paying. Unless jewellery is powdered very fine, the sponge gold will not be like article 3. Article 3 is like sponge gold obtained by treating powdered quartz with mercury.

II. The accused was charged under Section 411 I.P.C. He pleaded guilty but said that he was ignorant and innocent and that Bapu Sab gave it to him. I take it that the plea is one of not guilty. The accused has no defence witnesses.

III. The accused was caught on the Railway, and although the accused says that he got the sealed parcel in a house in Steven's Camp from a gold dealer there is no proof on the side of the prosecution that the accused had the gold in the scheduled mining area before he came to the Railway. The case has therefore to be decided entirely with reference to Section 411 I.P.C.

I have discussed the points of law involved in my judgment convicting the accused in the last Railway sponge gold case. Government Vs. Kullan C.C. 503 of 14-15 disposed of on 19th January 1915. Briefly my argument was that sponge gold found so near the mines should be held to be stolen property under Section 114 of the Evidence Act, though the locality of seizure may not be the mining area itself and that

once the presumption under Section 114 of the Evidence Act is drawn to the effect that sponge gold must be property stolen from the mines, the burden is on the accused under Section 106 of the Evidence Act of showing how he came by the property.

As regards guilty knowledge, the fact that a cooly carries valuable sponge gold, which is presumably stolen property without being able to offer a proveable explanation raises a strong presumption against him which it lies with him to rebut. 19 Mysore Chief Court Reports 80 at pp.82-3.

IV. Since delivering my judgment on the above lines in Government Versus Kullan on 19th January last, I have further studied the matter with the result that I have felt doubts which I have expressed on the 8th February 1915 in my judgments in Government versus Abdul Razack Criminal Case No.537 of 14-15 and Government versus Abdul Aziz Criminal Case No.538 of 14-15. The doubt is whether it should not be held that sponge gold is stolen property only for purposes of an order under section 517 Criminal Procedure Code and not for purposes of an order under section 517 Criminal Procedure Code and not for purposes of a conviction under Section 411 I.P.C. Compare 18 Mysore Chief Court Report 185 at pp 194 & 195 Gulam Hussain Versus Government Criminal appeal No.110 of 13-14 in the Chief Court and my judgments in C.C. 537 and 538 quoted above.

Moreover as observed by me in Government versus Panchaksharam C.C.No.663 of 14-15 on 8th April last, it does not appear to me that sponge gold which could not be said qua sponge gold to be stolen property on the date of the passing of the Mines Regulation can be said sometime after

the passing of the Mines Regulation to be stolen property simply because it is sponge gold and the Mines Regulation has been in force for some time; for, such a construction would in effect be to give different meanings to the Mines Regulation at different times. If, as I think, even in the scheduled mining area, sponge gold should be proved to be stolen property for purposes of conviction under Section 411 I.P.C., by means of special facts independently of presumptions from the existence of the Mines Regulation and not by reason of such presumptions , a fortiori special circumstances are necessary to be proved to show that sponge gold found in a non-mining area is stolen property. In re independence of the mines Regulation, please compare 6 Mysore Chief Court Reports 100 at page 101 for analogy.

Again, Lord Hale says "I would never convict any person for stealing the goods of an unknown person merely because he would not give an account of how he came by them unless there was one proof made that there was a felony committed of these goods." Vide page 634 of Mayne's Criminal Law of India, 4th Edition. In this view strict proof that the sponge gold was stolen from a mine would be necessary for a conviction under Section 411 I.P.C. This view was evidently present to the mines of the Judges (Sir Stanley Ismay C.J. and Mr. Justice Chandrasekhara Iyer) who decided the case of Chellamuthoo versus Government in Criminal appeal No.44 of 11-12 on 13th November 1911; for the Judges say "It is urged that the (sponge) gold is not stolen property and we are placed in a position of considerable difficulty." The conviction was however affirmed though with hesitation and it was remarked "Throughout the trial it was tacitly admitted that the gold was stolen property and it is not even now

suggested that the accused would have any answer to the charge if he was put on his trial for an offence under the (Mines) Regulation".

The judgment of the Chief Court in Gulam Hussain versus Government already cited is but the logical outcome of the above - when an alternative charge under the Mines Regulation was impossible on the Railway, the conviction under Section 411 I.P.C. was set aside in Gulam Hussain's case, and the Judges (Chandrasekhara Iyer & Paramasiva Iyer J.J.) remarked "The mere fact that they (the materials seized) are similar to materials used in the mining industry can only raise a presumption that they left one or other of the Mines by theft, but this alone is not sufficient to sustain a conviction under Section 411 I.P.C." This view is in accordance with the following passage in 2 East P.C. 656 quoted at page 631 of Mayne's Criminal Law of India 4th Edition." The bare circumstance of finding in ones possession property of the same kind which another has lost, unless that other, can from marks, or other circumstances, satisfy the Court and Jury of the identity of it, is not in general sufficient evidence of the goods having been feloniously obtained".

In this case the sponge gold bears marks of having been strained through cloth and of having been obtained by the mixture of powdered stuff with mercury. But I do not think that these marks are marks of identity. The sponge gold can only be said to be similar to the sponge gold of the Mines. I have therefore the very greatest hesitation in view of Challamuthu's case and Gulam Hussain's case in convicting the accused of this case under Section 411 I.P.C

There are no special circumstances to indicate the identity of the sponge gold such as that it was seized underground in a mine or from a man just coming from underground. My hesitation is considerably greater than that of the judges in Challamuthu's case for, there, there was the assurance that an alternative charge under Sections 6 & 13 of the Mines Regulation would be unanswerable; and here the Mines Regulation does not apply.

I am strongly of opinion that to set at rest the doubts created by the opinions of such eminent Judges as Lord Hale cited above, it is an urgent necessity to extend section 5, 6, 13, 14, 15 & 20 of the Mines Regulation to that portion of the Railway which is in the heart of the Gold Field and which, as matters now stand, helps offenders greatly. In this case however I conceive myself bound by authority. Railway sponge gold cases have hitherto ended uniformly in conviction from the time of my predecessors. In Challamuthu's case which was a sponge gold case, the Judges while confirming the conviction under Section 411 I.P.C. with hesitation, have yet observed "The gold recovered was sponge gold which could only have been acquired by theft from some Mine within the mining area". Following precedents, though with great hesitation, I convict the accused under Section 411 I.P.C. for the reasons given in para III of this judgment and sentenced the accused to suffer one year's regorous imprdsonment.

There is in any case an inferior degree of probability which even if insufficient for conviction is sufficient for Section 517 Criminal Procedure Code. This probability is that the sponge gold belongs to the working mines. 18 Mysore Chief Court 194, 195. The sponge gold will accordingly be given to the Common Nominee of the Mines after appeal time.

In open Court.

Sd/ B. Venkoba Rao,

Senior Assistant Commissioner &

1st Class Magistrate,

Kolar Gold Field.

74

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Monday, the 11th day of July 1915.

Present:-

Mr. Justice K.S. Chandrasekhara Aiyar,

&

Mr. Justice T. Paramasiva Iyer.

Petition of Criminal Appeal No.170 of 1914-15 against the conviction and sentence by the Assistant Commissioner and First Class Magistrate of Kolar Gold Fields, under Section 411 of the Indian Penal Code, in Criminal case No.839 of 1914-15.

Appellant
Mahomed Usman
(Accused).

JUDGMENT.

The appellant Mahomed Usman has been convicted by the 1st Class Magistrate, Kolar Gold Fields, of an offence punishable under Section 411 of the Indian Penal Code. He was arrested within the precincts of the Champion Reefs Railway Station (which is not within the area of operation of the Mysore Mines Regulation) with a packet containing 4 balls of sponge gold concealed on his person. Beyond the appellant's statement-which however was not believed by the Magistrate-that he received the packet from one Bapu Sab in Steven's Camp, there is nothing to show where and how the appellant came by the sponge gold. There is, further, no affirmative evidence that the article was stolen, or that the appellant dishonestly received or retained it knowing or having reason to believe it to be stolen property. The question therefore arises whether in such circumstances a conviction under Section 411 is maintainable.

This question was considered in February 1914 by a bench of two Judges of this Court and by them answered in the affirmative: Gurappa V Government 19 Mysore Chief Court Reports 80. The property involved was proved to be such as could only have come into existence by the distinctive cyanide process in use in the Kolar Gold Mines and nowhere else within the reasonable distance thereof; and this circumstance no doubt, largely influenced the decision, leading as it did in the first place, to a presumption that the articles in question could only have passed into the possession of a private individual by means of theft. From the nature of the articles, again, coupled with the position in life and business of the accused and the fact that he had offered no explanation of his possession of them, it was regarded as established that he must have received or retained them with guilty knowledge; and finally, in the absence of any hint or plea that he intended to return the articles to the lawful owners, it was inferred that he must have acted dishonestly. A rather different view was taken in July 1914 by the bench that heard the appeal of Gulam Hussain versus Government (Criminal Appeal No.110 of 1913-14 unreported). Here the accused was found within the limits of the Oorgaum Railway Station in possession of brass fittings and copper ~~xx~~ wires and screens connected with the mining industry on the Fields and not available in the local market. The Court declined to uphold the conviction under Section 411 of the India Penal Code, remarking: -

"There is no proof that the materials seized were the property of any particular mine, and none that it was stolen property and that accused had received the same with

dishonest intention. The mere fact that they are similar to materials used in the mining industry can only raise a presumption that they left one or other of the mines by theft, but this alone is not sufficient to sustain a conviction under Section 411 of the Indian Penal Code.

On the other hand, in a still later case disposed of in March 1915, Abdul Razack Vs Government (Criminal Appeal No.129 of 1914-15 also unreported), a conviction under Section 411 was upheld by another bench with the observation that the articles found in possession of the accused, which bore distinct marks of ownership, "are proved to be stolen property, and the accused's attempt to conceal that property in a pot of food is proof that he knew that it was stolen."

An earlier unreported case - Challamuthu Vs Government Criminal Appeal No.44 of 1911-12 - was cited by the Government Advocate in the course of his arguments in support of the conviction; but we do not think it is really helpful to his contention. It was a case of the unauthorised possession of mining material within the area to which the Mysore Mines Regulation has been applied, and therefore ought to have been dealt with under Sections 6 & 13 of that Regulation. Instead, the Magistrate who tried the case chose to convict the accused under Section 411 of the Indian Penal Code, though proof was wanting that the property was stolen and that the retention was with guilty knowledge and was dishonest. The Court expressed itself as "placed in a position of considerable difficulty owing to the ill-judged action of the Magistrate," pointed out "that the Magistrate entirely failed to grasp the distinction between the two offences," felt "considerable hesitation" as to whether "in view of the

defective way in which the case had been tried," it "ought not to quash the proceedings and to order a retrial," but in the end "refrained from ordering further proceedings" in view of the fact that the accused would not benefit by any such order" inasmuch as the property recovered was sponge gold which could only have been acquired by theft from some mine within the mining area and the accused would not have any answer to the charge if he was put on his trial for an offence under the Mines Regulation. This case, if it decides anything, decides rather that a charge under section 411 ought not to be restored to in the absence of proof of all the requisites to a conviction thereunder; it certainly does not decide that facts which may be just sufficient to sustain a conviction for unauthorised possession of mining material within the "applied" area are sufficient to sustain a conviction under Section 411 of the Indian Penal Code for dishonest possession of stolen property within that area, much less for such possession outside that area, as in the present case.

The learned Government Advocate has also referred us in the present connection to the following cases:- Pritchard Versus Government 15 Mysore C.C. Reports. 299; Government Versus Pritchard 17 Mysore C.C. Reports. 114; Government Versus Arthur Gifford, 18 Mysore Chief Court Reports 185 (a full bench decision). It suffices to say that <u>11</u> these were cases under Section 517 of the Criminal Procedure Code in which the question related primarily to the disposal of property found to have been the subject matter of an offence and that in our opinion considerations which may be sufficient to enable a Court in a summary enquiry of that kind to adjudicate on a claim of a <u>quasi</u> civil nature, especially where it relates to property that is not claimed by

the alleged offender but by a third party are not necessarily decisive, even if adequate, in a Criminal case in which a person is on his trial for an offence imputed to him.

The three cases, already referred to, in which the question now before us was also involved appear, on the face of them, to conflict with one another. It may be possible to reconcile them by a reference to the character of the property and the circumstances connected with its possession in each case; but that in no way facilitated the deducting of a consistent general principle from these cases. At the same time there is reason to think that such apparently conflicting decisions at short intervals tend to unsettle the minds of the subordinate magistracy, especially in the Gold Fields, and to create doubts and misconceptions as tothe nature of the evidence required to sustain a conviction under Section 411 in regard to the dishonest possession of stolen property, and, in particular, as to how far presumptions derived solely or primarily from the nature of the property (as for instance sponge gold) can supply the place of positive evidence as to the property having been stolen from a specific owner and as to the knowledge and intention of the accused person in the matter of its possession.

The question is a very important one, and we refer it to a Full Bench for decision.

33

IN THE CHIEF COURT OF MYSORE AT BANGALORE

Criminal Appeal No.170 of 1914-15.

GOVERNMENT VERSUS MOHAMED USMAN.

Present:- (Full Bench)

Sir Leslie C. Miller, Kt. C.J.,

Mr. Justice Chandrasekhara Aiyar,

Mr. Justice Paramasiva Iyer.

J U D G M E N T.

In the case out of which this reference has arisen, the accused was arrested on suspicion in the Champion Reefs Railway Station, and on his person was found a packet containing four pieces of sponge gold.

He said that he received these pieces from one Bapu Sab who had promised him a rupee if he would carry them to Bowringpet. There was no other direct evidence to show where and how he came by the gold or to whom the gold belonged. There is evidence that sponge gold is manufactured by the Mines in the Kolar Gold Field and is not sold in that form, and that any one can make sponge with some difficulty but it would not pay to reduce gold bullion into sponge gold. No definite question of law has been formulated by the Bench which had the case for decision but as I understand the matter, we are asked to decide whether there is evidence inthe case sufficient in law to sustain the conviction.

The prosecution have to prove that the sponge gold was stolen property, but I find nothing in Section 410 or 411 of the P.C. to require them to prove from whom it was stolen. Obviously, unless it can be proved that the property had some

owner or possessor other than the accused, it will be impossible to regard as proved theallegation that the property is stolen property, but if it can be shewn that the property had an owner or possessor who may be either A or B or C or D none of whom is the accused, then the Prosecution has done all that is necessary to show that there was an owner or possessor other than the accused, and it is not necessary to go farther and show exactly who that was. Here what is shown is that the working mines do manufacture sponge gold in the course of the production of gold bullion, in the locality near which the case arose; that it pays no one to turn gold jewellery (the instance selected in the Magistrate's Court) into sponge gold, the process would be difficult; and that the sponge gold in the case resembles that produced by the treating of crushed quartz with mercury; and that in the form of sponge gold no gold is disposed of by the Mining Companies.

The question is - Can this evidence be said to prove that the sponge gold belonged to one of the Mining Companies.

Ownership and possession like other facts may of course be proved by circumstantial evidence, and if the circumstances proved to exist lead to only one reasonable conclusion the Court will, I take it, regard that conclusion as proved: there is no presumption of law in the matter. We set in array all the facts proved to exist, and we have regard to the common course of events, human conduct, public and private business, (Sec.114 Evidence Act) in relation to the matter in hand; if we find after considering all these particulars that taken together they render the existence of a particular fact in issue so probable that a prudent man ought to act on the supposition that it exists, we say that the existence of that

fact is proved (Sec. 3 Evidence Act), or we may say that so strong a presumption is raised in favour of its existence that we are entitled to regard it as proved (Sects.4 & 114 Evidence Act). The rule in a criminal case is that we are not to regard as proved against the accused any fact in issue of the existence of which we can entertain a reasonable doubt: the inference to be drawn from the circumstances proved must be plain, and we must be unable, exercising our reason without bias and to the best of our ability, to find any other inference that we can properly draw from them that oral evidence adduced by the prosecution in the case under consideration is believed. Then we have it proved that sponge gold is made by the Mining Companies on the Kolar Gold Field; that it is not an article which is likely to be made from what I may call commercial gold; and that it is not sold by the Mining Companies to any one. The last circumstance does not affect the question of the original ownership of the sponge gold found on the accused. Do the other facts lead to the inference that that gold belonged to the Companies? They prove I think beyond reasonable doubt that the sponge gold was produced from the quartz and not from refined gold; does it follow that the sponge gold was the property of one or other of the Mines on the Kolar Gold Field? There is no evidence in the case shewing what is the nearest place where it would be reasonable to expect to find mining and crushing operations in progress.. In the absence of evidence given in the case may we presume, i.e., regard it as proved that there is no place other than the Kolar Mines from which the accused can be reasonably held to have obtained possession of gold?

The accused told the Police when they arrested him that he got the gold from Bapu Sab on the Kolar Gold Field, but Bapu Sab could not be found and the Magistrate does not believe the story. True or false, it does not greatly help us to decide the question "Where was the sponge gold made?"

In Criminal Appeal 44 of 1911-12, the case to which the Magistrate referred as Challamuthu's case, the learned Judges of this Court observe that the property in question there was "sponge gold which could only have been acquired by theft from some Mine in the mining area." The process of reasoning by which this conclusion is reached is not stated, but I do not find in the judgment on appeal or in the Magistrate's judgment in that case anything to suggest that any more definite evidence was given there as to the origin of the sponge gold than has been given at the present case on the same question; and the Magistrate says that his predecessors have found themselves able to convict in similar cases. I do not wish to suggest that in any of these cases the convictions were wrong or that the observations of the learned Judges in Challamuthu's case was not justified. The question we are considering is a question of fact and each case must depend on the circumstances found to exist in it. It is clear in the present case from what I have already discussed of the evidence that there is no direct evidence to the effect that no one within reasonable distance of the Kolar Gold Field makes sponge gold except the Mines for whom Mr. Stapleton in his evidence is speaking. As I have pointed out the effect of what he says is "We (i.e. Those Mines) manufacture sponge gold like that produced in the case and do not dispose of it locally". To find that no one else manufacture sponge gold

or disposes of it locally we want something more than this and in cases in which there is no other direct evidence given, the deficiency must be supplied of it all from the personal knowledge of the Judge, in other words, it must be supplied by facts of which he is entitled to take judicial notice, or of which he is personally cognisant.

It is always difficult to say how far a Judge can properly import into a case his personal local knowledge, and if the Magistrate in this case has stated as a fact that sponge gold is not made within a reasonable distance of the Kolar Gold Field except in the Mines to which Mr. Stapleton may be taken to have been referring in using the pronoun "we", I should perhaps have hesitated, having regard to the previous cases, to say that he was not entitled so to find, especially where the accused does not choose to allege that the property was produced elsewhere. But here the Magistrate does not say so in his judgment and I need not decide the question - I certainly cannot profess to be able to say so of my own personal knowledge of the locality. Mr. Stapleton's evidence may-I am not sure that it does not - refer only to the Champion Reefs Mine, but I am taking it in favour of the prosecution that it refers to all the Mines working on the Kolar Gold Field. Even so it requires to be supplemented by further facts before the case for the prosecution can be held to be established. I think it is quite likely that the necessary evidence could have been produced without great difficulty, had those responsible for the prosecution recognised that it was required, but they seem to have failed to recognise the necessity and that is perhaps not unnatural seeing that on former occasions convictions were secured apparently without

more evidence than we have in this case. If the Magistrate instead of treating the case as largely a matter of law, had seen that what was necessary was to show that there were no reasonably possible owners of the sponge gold other than the Mines, he would probably have called for other evidence, or has stated that the fact was so notorious in the locality that he felt himself entitled to take judicial notice of it.

The second step is to show that the property is stolen property. If it were shown in this case that the sponge gold belonged to the Mines referred to by Mr. Stapleton, then I think his evidence that they do not dispose of it locally, though very general and vague, might be sufficient having regard to the common course of business and human conduct, we might be able to presume that the Mines do not give or throw away sponge gold, and that its transfer from them to the possession of some else must be by some of the processes described in Section 410 of the Penal Code.

The third step, to prove the guilty knowledge of the accused would seem to be easy; it would not be wrong to presume that he knew that the Mines did not dispose of their sponge gold locally; and as a consequence to hold that he must have had reason to believe that their sponge gold was not honestly come by unless he received it from one of their Officers.

But holding that the evidence is insufficient as it stands to prove the first step, and proof of that step being necessary to establish the case against the accused, I would reply to the reference that the evidence is insufficient to support the conviction.

28-7-15. (Intld) L.C.M.

"C O P Y"

The records will be returned to the Division Bench with this opinion and the accused will be released on his recognizance in Rs.100/-.

28-7-15. (Intld) L.C.M.

(Intld) T.P.

&&&&&&&&&&&&&&&&&

I fully accept and have nothing to add to the learned Chief Judges statement of the points to be established in order to sustain a conviction under Section 411 of the Indian Penal Code in cases of the kind mentioned in the order of reference.

(Intd) K.S.C.

I agree that the evidence is insufficient to support a conviction in this case. I would go a step further than the learned Chief Judge and hold that no amount of indirect proof drawn from surrounding circumstances that the property must have had an owner other than the accused can satisfy the requirements of the definition of stolen property contained in Section 410 I.P.C. There must be definite proof that the property in question was in possession of the person other than the accused before it was found in the latter's possession and in the absence of such proof there would be no material for a charge under Section 411 of the Indian Penal Code. It was chiefly to meet this difficulty that the Mines Regulation was enacted and that Regulation should in my opinion be extended to the Bowringpet Gold Field State Railway.

28-7-15. Sd/ T.Paramasiva Iyer.

&&&&&&&&&&&&&&&

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

CRIMINAL APPEAL NO.170 of 1914-15.

FINAL ORDER OF THE DIVISION BENCH.

In view of the opinion expressed by the Full Bench that the evidence in the case is insufficient to sustain a conviction under Section 411 of the Indian Penal Code, the conviction and sentence are reversed and the appellant is directed to be set at liberty.

The learned Government Advocate requests the Court to set aside the order of the Magistrate regarding the disposal of the property involved in the case and direct its being confiscated to Government. We do not think the reversal of the conviction necessitates any such consequential action and we refrain from passing any order in this respect.

2-8-1915.

Sd/ K.S. Chandrasekhara Iyer.

Sd/ T. Paramasiva Iyer.

T.M.M.

191

From

The District Magistrate,
Kolar District.

To

The Secretary to the Government
of Mysore, Genl. Dept.,
Bangalore.

Dated

Despatched 27th August/1

Received

General No. 87

No. 1

Enclosure No. 5

Submitting copies of
judgments in certain
Cases on the file of
Special Magistrate,
Kolar Gold Fields.

No. 67/7

District Magistrate's office,

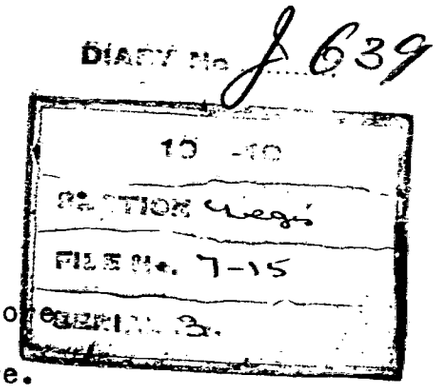
Kolar District,

Dated Kolar, the 27th August 1915.

From

P. F. B O W R I N G, Esquire, J.P.,

District Magistrate, Kolar District.



To

D. M. Narasinga Rao, Esquire, B.A. B.L.,

Offg. Secretary to the Government of Mysore,

General Department, Bangalore.

Sir,

With reference to your letter No.J.772/Legis.7-15 dated 12th August 1915, calling for the submission of certain copies of judgments of the Special Magistrate, Kolar Gold Fields, I have the honor to submit herewith copies of judgments in the marginally noted cases and to state that the original records in C.C. Nos.503,537 and 538 nave already been submitted to Government with this office No.399 dated 29th April 1915.

I have the honor to be,

Sir,

Your most obedient servant,

M Venkatesa Iyengar

for District Magistrate,

Kolar District.

1. C.C. No.251 of 11-12 on the file of the Special Magistrate.
2. Crl. Appeal No.44 of 11-12 on the file of the Chief Court.
3. C.C.No.663 of 14-15 on the file of the Special Magistrate.
4. C.C. No.663 of 13-14 ...do...
5. Crl.Appeal No.110 of 13-14 on the file of the Chief Court.

Enclosure to Lejis 7-15-3

In the Court of the Assistant
Commissioner and 1st class
Magistrate, Kolar Gold Fields

Dated the 16th day of October
1914

Present D. S. Jayarama Aiyar Esqr.
B. A. B. L.
1st class Magistrate.

Criminal Case No. 257 of
1911-12

Complainant vs Accused

Government Chellamuthu

The complaint is at the
instance of the Champion
Reef Police.

The case for the prosecu-
tion is as follows:—

Mr. Anderson, Rw. 2, a
Detective Police Inspector
having received intimation
that the accused who is a
bellman of the Oorgaum
Gold Mining Company was
likely to pass on 26th September
1911 by a garden in Masipam
with gold stolen from the
Mines, he sent for Vijaya-
raghavalu, Rw. 1, a Head

Constable of the Champion Reefs Police Station, it not being within the competence of a member of the detective force to arrest persons or seize property and both of them were lying in wait near that garden at about 1 P.M. When the accused was seen to be coming from the Southern to the Northern direction i.e. towards the garden on which Mr. Anderson pointed him out to Vijararaghavalu as the suspect. Mr. Anderson concealed himself in a lantana bush Vijaya raghavalu who went towards the direction of the accused (i.e. from ~~the~~ North to ~~the~~ South) was observed by the latter while he was at a distance of 30 yards from him, and as he appeared agitated,

the Head Constable asked Lalu, Rw. 3, who was between himself and the accused to seize the latter and he proceeded to do it but before he seized him the accused threw into a garden close by a bundle wrapped in a cloth that he had in his hands, which hit against a tree in the garden and fell on the ground; and immediately Rws 1, 2 & 3 and the accused went into the garden, picked up the bundle and found that it contained five pieces and some dust of 8 ounce gold valued at Rs. 88 The accused is consequently charged with an offence under Section 411, I.P. Code

The following witnesses were examined for the prose-cution:

1. Vijayaraghavalu
2. J. T. Anderson. 3. Lalu

3 Article No. 1 8 ounce gold was produced for the prose-cution.

4. The statement of the accused was as follows:-
"I see article 1. It does not belong to me. I was never in possession of it. I did not meet No. 1 on 26th September 911 and I did not on seeing him throw it into a garden near Marikam. I was arrested by the Police at Kegalle while I was near a garden at Marikam I was beaten and taken into the garden and shown a packet. In my distressed state of mind, I did not see what it contained. I do not know if it contained gold

5. The Charge framed against the accused was as follows:-
"That you, Chellammuthy

on or about the 28th
of September 911, at Manikam
dishonestly retained stolen
property – the spouse gold and
dust marked article
and Valued at Rs. 88,
having reason to believe
the same to be stolen pro-
perty and thereby com-
mitted an offence punish-
able under section 411
of the Indian Penal Code
and within the cognizance
of this Court.

I cannot plead not
guilty to the charge

6 The following wit-
nesses were examined
for defence

Ganesh Nair

Two Exhibits filed for
defence

Mr Anderson, Pw 2, has deposed that on 26th September 1911, he sent for Kyarazapha Valu a member of the regular Police force and asked him to lie in wait near a garden in Maridam with him for a person expected to come there with stolen gold and that while both of them were so waiting there, the accused was seen at about 1 Pm to come from a southerly direction towards the garden (i.e. in a northerly direction) when he pointed out to Pw 1 the accused as the person suspected of coming with stolen gold (See also the evidence of Pw 1). Mr Anderson says that after pointing out the accused to Pw 1, he hid himself in a lantana bush, evidently for the reason that his appearance

on the scene would by no means have had the effect of throwing him off his guard.

Vijayanaphavalu, Rw 1, who is a Head Constable of the Champion Reef Police Station, states that at the request of Mr Anderson, he went near the garden at Maropam at 12.30 Pm on 26th September 1911 and waited there with him for nearly half an hour, when the accused who was seen to be coming from a Southerly direction was pointed out to him by Rw 2 as the suspect, whereupon he alone went towards the accused and when he was about thirty yards from him, the latter began to walk fast from which this witness inferred that he was attempting to

run away and as a consequence the witness called upon one Lalu Rw. 3 who was between these two persons to seize him and that as Lalu was proceeding to seize him, the accused threw into the garden close by a cloth packet which he had in his hand, that then the accused was seized, and subsequently one of them i.e. Rws 1, 2 & 3 and the accused went into the garden, found the packet, opened it and saw that it contained five pieces of stone gold and some dust of the same kind of gold Valued at Rs. 88.

Lalu, Rw. 3, has said that while he was bathing near the garden at 1 Rw. on 26th September QII the

accused was coming from the South and Mr. from the North; when the latter asked his witness to seize the accused and he immediately proceeded to do so, but before he actually seized him, the accused threw into the garden a cloth packet that he had in his right hand which struck against a tree in the garden and fell on the ground below. Then the accused was seized and all the prosecution witnesses with the arrested man went into the garden and the packet which was picked up was found to contain opium (article 1).

Mr. Anderson has added that shortly after Vijayaraghavalu left him

he heard somebody shout out that the accused had thrown the gold and that immediately he saw a packet strike against a tree in the garden and fall on the ground below. He also went into the garden and was present when the packet was picked up and its contents found to be specie gold.

Various arguments have been advanced by the pleader for the accused in support of his contention that the evidence of the witnesses for the prosecution is unreliable. The first is that while Mr Anderson has said that somebody shouted out that the accused had thrown away gold,

nobody else has said so
but there is no force in
this contention for Lalu
could not have so shouted
because, as can be seen
from his evidence, he
did not know till the
packet was opened which
was done after the arrival
of Mr Anderson that it
contained gold and the
only other person that
could have shouted out
so was Vijayaraghavalu
but he has not said
anything on the point
for the simple reason
that no question touching
it was put to him by
anybody He has not
said that he did not
shout so and there is noth-
ing in his evidence there-
fore inconsistent with

that of Mr Anderson If the defence thought that there would be contradiction, Vijayaraghavalu might have been examined immediately after the deposition of Mr Anderson was recorded or after the charge against the accused was framed but Vijayaraghavalu was not so examined by the defence, though Lak was subjected to fresh cross examination after the framing of the charge

It is next contended that while Pws 2 & 3 state that after the accused was arrested, they walked straight to the place where the packet was lying in the garden, Pw 1 has deposed that he spent five

minutes in making a search for the packet, but the evidence of Vijaya raghavalu that he noticed when the accused threw the bundle, the exact spot where he threw it shows that what he intended to say was that the interval between the time at which the accused was arrested and the time at which they saw the packet in the garden was about five minutes, and this is not improbable since they must have taken some time to go from the place of arrest to the spot at which the packet was lying

It is further urged

that each of the three prosecution witnesses claims to have been the first discoverer of the packet in the garden but there is nothing in it for as all of them went into the garden at the same time, all of them saw the packet at the same time.

Wm Upageraphernalia says that he met Lalu accidentally near the garden. Mr Anderson has deposed that Lalu was probably brought there by Upageraphernalia There is no contradiction whatsoever here, for the evidence of Mr Anderson that he did not take Lalu there that he does not know who brought him there and that he was probably brought there by

Vijayaraghavalu does not clash with the latter's testimony that he did not take him there

These are what have been pointed out as contradictions but they neither amount to them nor relate to points of an important nature

The next contention is that as Lalu, P.W. 3, has undergone two years' imprisonment for offence under sections 379, 325 and 511, I.P. Code and one month's imprisonment for trespassing underground in the Coorgum Mine, his evidence ought to be rejected, but though in some cases such a contention would have substance in it, I do not think that in this instance the argument is

found, for if the Police had fabricated the present case, it is altogether unlikely that they would have evoked the assistance of a person with previous convictions like Lake, when they could easily have selected an unobjectionable person from the large population of the Gold Field. There is another reason why the Police would have avoided him, if they had a choice in the matter and that is that Lake was sentenced to two years imprisonment in a case in which he was found guilty of attempting to cause grievous bodily harm to a Police Constable. A person like Lake who committed such an offence was the last person whom

the Police would have thought of as a likely accomplice in the accomplishment of a nefarious design against the accused. The conduct of the Police in placing Lalu before the Court shows in these circumstances that they were obliged to cite him as a witness merely because he happened to be at the spot at the time They could not have avoided calling him

Though Lalu has been convicted twice, it is not even alleged that he has any motive to give false evidence against the accused who has not stated that there is any ill will between him and Lalu, who has deposed that he had never seen

the accused previously

And there is absolutely nothing against the testimony of Vyaraiahpanalu, P.W.1, who has no motive whatsoever to bring the accused to trouble, he not even having seen him before 28th September 1911.

Even if it be assumed for the sake of argument that the evidence of Lalu is untrustworthy the testimony of the disinterested witness Vyaraiahpanalu who is neither entitled to credit in the event of a conviction nor to discredit should there be an acquittal, the proceedings having been initiated by the Detective Department which merely made use of him for

making an arrest and effecting a seizure of property is in my opinion ample to warrant the conviction of the accused.

Immediately after the accused was ~~arrested~~ seized, he and another person were searched, according to Pw 3 and I may add even according to the only witness examined by the defence. It has not been stated by anybody that any proceedings have been instituted against the other man. Seeing that even the accused has not stated that any of the witnesses for the prosecution is interested in giving false evidence against him, their conduct in letting the other man

go and in proceeding only against the accused shows the bona fides of the pro-secution

The evidence of the witness for the prosecution clearly shows that the packet which was found in the garden contained opium gold which has been valued at Rs. 88. The accused is so dishonest as to say that he did not notice what the packet which was shown to him as the garden contained He has not said that there was no gold in it.

How did this gold come there? There is not even a particle of evidence that anybody other than the accused threw it there It is not possible to believe that the Police possessed so much opium gold or would have thrown it in the garden

when the result of it is that
it would be either confis-
cated to Government or
given to some Mining Com-
pany. That they would
have made such a sacri-
fice for securing the wrong
conviction of the accused,
against whom they bear
no malice whatsoever,
is altogether unworthy
of belief. I have no doubt
but that the accused
must have thrown it
in the garden, not with-
standing that Ganesh Rao,
the only witness examined
by him has said that so
far as he was able to
see the accused did not
throw any bundle into
the garden, which is quite
worthless, for if he was
at the scene of occurrence
he would have been fearful

like the accused and another but it is not stated that any such thing was done and in the second place the evidence of the witness for the prosecution that the accused threw the packet into the garden before he was seized by Lalu cannot possibly be regarded as supported by that of Ganesh Rao who has stated thus:-

"I do not know and I did not see what the accused did before he was dragged by the tall man (evidently Lalu) If he had done anything before he was dragged by the tall man it was not observed by me

My finding is that

the accused was in possession of the stolen gold Ornaments valued at Rs 88 at 1 pm on 26th September 1911 and threw it into the garden immediately after Vijayaraghavalu asked Lalu to seize him

It is well known that stolen gold cannot be in the possession of a person on the field except through the commission of theft. Since the accused has denied his ownership of the gold in question and having regard to its peculiar nature, there can be no doubt it was stolen property

He has made no attempt to account for his possession of it. He has deemed it the safest course for him to deny his possession of it.

His conduct in throwing it away immediately after Lalu was asked to seize him shows that he was in possession of it with the knowledge that it was stolen property. I would here refer to section 6 of the Mysore Mines Regulation which lays down that any person found to be in possession of any mining material (which includes stone gold) without the written permission of a Mining Proprietor or Superintendent and unable to prove that his possession of the same was obtained in a lawful manner shall on Conviction before a Magistrate be liable to the penalty

provided in section 13 i.e.
to imprisonment for a
term which may extend
to a year or fine not
exceeding Rs. 500 or both
In this case, as I have already
said, the accused has not
even attempted to show
that he obtained the gold
in question in a lawful
manner

I find the accused
guilty of an offence under
Section 4 (1), D. Code Accused's
* act constitutes an offence
under sections 6 and 13
of the Mysore Mines Regu-
lation also.

Great as has been
the care with which gold
is guarded on the field,
greater must have been
the skill with which the
accused ~~concerned~~ contrived

to obtain possession of it.
The accused is sentenced under
Section 411, I. P Code to rigorous
imprisonment for six
months

The gold in question will
be at the disposal of the
Government if no claim
is established thereto within
six months from the
date of a proclamation,
that will be issued in
the matter

(Sd.) T. S. Jeyaraman
Asst.
16. October 1911

Assistant Commissioner
and 1st Class Magistrate,
Kolar Gold Fields.

Copy

Second Assistant Commissioner
and 1st Class Magistrate,
Kolar Gold Fields.

In the Chief Court of Mysore
at Bangalore

Monday, the 13th day of November
1911.

Present

Mr Justice Stanley Isaac, C.S.I.,
Chief Judge,
and
Mr Justice R. S Chandrasekhara
Aiyar, Offg. Judge.

Petition of Criminal
Appeal No. 44 of 1911-12
against the conviction
and sentence by the
Assistant Commissioner
and 1st Class Magistrate
Kolar Gold Fields under
Section 411 of the Indian
Penal Code in Criminal
Case No. 251 of 1911-12.

Appellant
Chellammathoo
(Accused)

Judgment.

Unless the whole of the
evidence for the prosecution
is concocted. (which we do
not see the slightest reason
to suspect) it is proved beyond
all reasonable doubt that
the accused was found with
certain gold in his possession
It is urged however that the

gold is not proved to be stolen property and we are placed in a position of considerable difficulty owing to the ill-judged action of the Magistrate No doubt the Police report contains a mention of section 411 of the Penal Code as well as of Sections 6 & 13 of the Mynora Mines Regulation 1906 but it was incumbent on the Magistrate to exercise his own discretion in the matter of the Offence Charged. Section 6 of the Regulation enacts that any person found to be in possession of any Mining Material (which expression includes gold) without the written permission of a Mining Proprietor or Superintendent and unable to prove that his possession of the same

was obtained in a lawful manner, shall on conviction be liable to a certain penalty. The ingredient of the offence is possession and the burden of proving that the possession is lawful is on the person accused. On the other hand in order to sustain a conviction for an offence under section 411 of the Penal Code it is necessary for the prosecution to prove that the property was stolen property and that it was dishonestly received or retained by the accused who knew or had reason to believe the property to be stolen property.

That the Magistrate entirely failed to grasp the distinction between the two offences is shown by the fact that at

the end of his Judgment he refers expressly to section 6. of the Mysore Mines Regulation and remarks that the accused has not even attempted to show that he obtained the gold in a lawful manner

In view of the defective way in which the case has been tried we feel considerable hesitation as to whether we ought not to quash the proceedings and to order a retrial We have however come to the conclusion that the accused would not benefit by any such order The gold recovered was Spring gold which could only have been acquired by theft from some mine within the Mining area

throughout the trial it was tacitly admitted that the gold was stolen property and it is not even now suggested that the accused would have any answer to the charge if he was put on his trial for an offence under the Regulation. We think under these circumstances that we are justified in refraining from ordering further proceedings and we dismiss the appeal The Magistrate will forward a copy of this judgment to the Superintendent of Police for his guidance

Sd/ S. Ismay
Chief Judge.

Sd/ K.S. Chandrasekhara Aiyar
Dist. Judge.

"Copy"

Senior Assistant [illegible]

In the Court of the Assistant Commissioner and 1st Class Magistrate, Kolar Gold Fields

Dated the 8th day of April 1915.

Present B. Venkoba Rao Esquire, B.A.,
1st Class Magistrate.

Criminal Case No 663 of 1914-15

Complainant
Government

vs

Accused
Panchakshara.

The Case against the accused Panchakshara is as follows:-

On 19th March 1915 on information furnished by the Detective Police Rr. 5 Head Constable Gopala Rao proceeded to Moppet Lines in Jandamot and conducted a search Railway Constable Rr 4 Perumal was searched and sent into the house of the present Case and he brought out article 1

quantity wrapped up in article 2 paiche and kept in the chatti article 3. Rw 3 Dadamea was one of the panchayatdars. He found that when the search began the accused was measuring grain in the house. The house is divided into two portions by a partition and articles 1, 2 and 3 were brought from the inner room. Head Constable Gopala has arrested the accused the wife of Appasami and Thangavelu But the two latter were released as

Rw 5 simply to ascertain the owner of the house the others were taken into custody.

Rw 2 Appasami and his wife are tenants of the house

Pw 2 says that article 2 is a cloth belonging to the accused. Pw 1 Fitz Gibbon finds the quarty to be gold bearing and to be worth 1 Re. 9 as.

II The accused was charged under sections 6 and 13 of the Mining Regulation. He says that he does not know how the quarty came into the house The accused has examined two witnesses to show that he was brought to the house by the Police from a pipe where he was, and that there are two tenants in the house who use the partitions together for cooking purposes

III This is a most doubtful Case. The house has

a number of inmates and Head Constable Gopala Rao arrested three persons on suspicion. Exclusive possession of the quarty by the accused is sought to be shown by the evidence that the cloth article 2 in which the quarty was found tied belongs to the accused. But P.W. 2 Appa-Saunni whose wife had been arrested on suspicion is the only person who speaks of the identity of the cloth. Even he on Cross examination says "Article 2 must be the accused's not his fatherinlaws showing that his evidence is not what he knows but what he infers which is quite a different thing.

Even assuming that article 2 is an old rag of the accused, it does not follow that the accused himself should have tied up the quartz as article 2 or have been aware of its existence there.

The quartz is no doubt a mining material, but possession not being proved, I acquit the accused of the offence punishable under sections 6 and 13 of the Mining Regulation.

I am of opinion that mining material qua mining material cannot be considered stolen property, although special circumstances can always be proved in each particular case to show that the mining material

of that Case is stolen property.
It appears to me that mining
material which could not
be said qua mining material
to be stolen property on
the date of the passing of
the Mining Regulation
cannot be said some
time after the passing of
the Mining Regulation
to be stolen property
simply because it is
mining material. For
such a construction
would in effect be
to give different meanings
to the Mining Regulation
at different times. It
appears to me that mining
material should be
proved to be stolen property
independently of presumptions

from the existence of the
mining Regulation and not
by reason of such presump-
tions. Please compare
6 Mysore Chief Court Reports
100 at page 101 on a
different matter for analogy.

In this particular case
there are special circumstances.
No one claims the quartz.
No. 2 Appasami and
the accused are both Coolies
of the Mysore Mine and
for the purposes of an
order under section 517
Cr. P. Code, probability
insufficient for a conviction
has been held to be sufficient.
Vide my remarks in Criminal
Cases 537 & 538 of 1914-15 of
this Court. I think that
there is this superior degree
of probability that the

Quarty article 1 belongs to the Mysore Mine. Article 1 will accordingly be delivered to the Mysore Mine after the usual time. I accept the superior degree of probability because such is said to be sufficient Vide 18 Mysore Chief Court Reports 185 at Page 194. Application by the Mysore Mine is unnecessary: Government vs Mr Payne Criminal Revision Petition No 115 of 1914-15 on the file of the Chief Court.

Article 2 the Cloth and article 3 the Chatty will be dealt with

as unclaimed property.

In open Court

I signed B. Venkoba Rao

Senior Assistant Commissioner
and 1st Class Magistrate,
Kolar Gold Fields.

8. 4. - 15

Copy

B. Venkoba Rao

Senior Assistant Commissioner
and 1st Class Magistrate,
Kolar Gold Fields.

In the Court of the Assistant
Commissioner Land
1st class Magistrate, Kolar Gold
Fields.

Dated the 6th May 1914

Present J. Chokkanna Esquire
B.A.
1st class Magistrate.

Criminal Case No. 663
of 1913-14.

Complainant — vs — Accused

Government — Gulam Hussain

On the morning of the
23rd the accused was seen
to be a passenger by the
mail train to Bowringpet
He had a bag with him
which PW 1 asked to know
the nature of the contents
of. Accused saying the bag
contained scrap metal
he was detained and the
matter reported to the Sub
Inspector in charge of the

Kolar Gold Fields Railway Police

He got the articles examined by experts and has been able to separate articles 2, 3, 4, 5 & 6 from the whole lot as being connected with the mining industry on the Fields

The Mysore Mines Regulation according to which these articles are Mining Material and the onus of proving how he came by these lies on the accused has not been extended to the Railway Section when the jurisdiction over this territory was temporarily transferred to Mysore by H.E. the Viceroy and Governor-General in India

The Police have therefore

Charge sheeted the accused
under the Indian Penal
Code section 411.

The brass fittings, Copper
wire, Contacts & terminal
and the copper screens
before the Court are Connected
with the industry, on the
fields and are not avail-
able in the local market
The Companies themselves
down place these scrap
material on the market
as they have use for
them in their fitting Shop.
Copper no longer useful
in the Electricity Depart-
ment is stocked by them
and sold to the Companies
on the fields for being
melted down into brass.
All brass is used up

for making new fittings for their machinery.

It is therefore evident that these articles can only be obtained by surreptitious removal from their proper owners.

As was remarked by the Chief Court in appeal Judgment (No 37 of 13.4) "These articles are Mining Material" within the definition of that term in Regulation No. IV of 1906 and the disposal of them locally is forbidden. The owner of them was clearly one of the Mines — and any acquisition of them locally by private individuals must therefore be prima facie by a dishonest removal of them out of the possession

of their owner i.e. by theft
There is no evidence on
accused side to rebut this
presumption and it therefore
follows that the articles
passed out of the possession
of their owner by theft."

The presumption of theft
of these articles therefore is
irrebuttable and the
accused coming into their
possession must be held
responsible therefore if
his guilty knowledge of
their nature cannot be
proved or presumed.

In this particular case
the accused has been once
before put up for a
similar offence and has
been sentenced to 2
months' imprisonment
It cannot be therefore

that he did not know
the risk attached to a
trade in these scrap
material

In fact there is a regular
trade in these materials
the actual buyers like
the accused going over the
Coolie lines with fired peas,
preserved dates and such
like and bartering the
same for the scrap material
from their actual thieves.
It is so very difficult
in an open area like the
Gold Fields to catch the actual
thief but a good Check may
be placed on this trade by
stopping this transfer of
hands whenever possible

I find accused guilty
and sentence him to

rigorous imprisonment for 3 months.

Articles 2, 3 and 4 will be returned to the Electric Department. 5 & 6 to Mr Payne as common nominee of the superintendents of the working Companies on the fields and article 1 and the remaining scrap material unconnected with this case returned to the accused.

Sd/ J Cadell Kamma

Assistant Commissioner
and 1st Class Magistrate,
Kolar Gold Fields

6th May 1904

Copy

Senior Assistant Commissioner
and 1st Class Magistrate,
Kolar Gold Fields

Rmg

In the Chief Court of Mysore at Bangalore

Thursday, the 9th day of July 1914.

Present.

Mr Justice K. S. Chandrasekhara Aiyar
and
Mr. Justice T. Paramasiva Iyer.

Petition of Criminal Appeal No. 110 of 1913-14 against the conviction and sentence by the Assistant Commissioner and 1st. Class Magistrate Kolar Gold Fields, under Section 411, Indian Penal Code, in Criminal Case No. 663 of 1913-14.

Appellant
Gulam Hussain
(accused)

Judgment.

The appellant was convicted by the 1st. Class Magistrate of the Kolar Gold Fields under Section 411 of the Indian Penal Code and sentenced to three months' rigorous imprisonment. On 23rd April 1914 the appellant was seated in the mail train at Oorgaum Railway Station and sundry brass fittings

and copper wires and screens were found in his bag coming under the definition of 'mining material' in Regulation IV of 1906 Under Section 6 of that Regulation any person in possession of mining material is liable to be punished under Section 13 of the same Regulation unless he proves that he came by the material in a lawful manner. As however the Mining Regulation is not in force in the Railway area he was put up by the Police and convicted by the Magistrate for an offence under Section 411 Indian Penal Code there is no proof that the materials seized were the property of any particular mine and none that it was stolen property and that accused had received the same with dishonest intention

The mere fact that they are similar to materials used in the mining industry can only raise a presumption that they left one or other of the Mines by theft but this alone is not sufficient to sustain a conviction under section 411 of the Indian Penal Code. The Magistrate however remarks as follows "In this particular case the accused has been once before put up for a similar offence and sentenced to 2 months' rigorous imprisonment. It cannot be therefore that he did not know the risk attached to a trade in these scrap materials." The evidence adduced to prove this previous conviction is contained in the following extract from the evidence of the 5th prosecution witness a Sub Inspector of the Railway Police. "The accused's house in Robertsonpet was searched 7, 8 months ago and some

brass fittings found there. He was put up and sentenced to 2 months' imprisonment under Section 411, Indian Penal Code." Below this vague and inadmissible oral evidence of a Railway Officer and without a scrap of documentary evidence to prove the details of the alleged conviction as required by section 91 of the Indian Evidence Act or Section 511 of the Criminal Procedure Code the Magistrate has informally and improperly recorded an admission by the accused in answer to a question which in the circumstances he was not legally authorised to put and has on the strength of such admission, imputed guilty knowledge to the accused in regard to the nature of the property seized from him in this case. We cannot

too strongly deprecate the procedure adopted by the Magistrate in this case and setting aside the Conviction and sentence of the Court below, direct that the appellant be set at liberty forthwith.

Sd/ K. S. Chandrasekhara Aiyar
Judge

Sd/ T. Paramasiva Iyer
Judge

Copy

Senior Assistant Commissioner
and 1st Class Magistrate,
Kolar Gold Fields.